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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,513	08/09/2006	Bernd Danner	8009-88143	5154

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EXAMINER	
NGUYEN, CHUONG P	

ART UNIT	PAPER NUMBER
3663	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/578,513	DANNER ET AL.	
	Examiner	Art Unit	
	Chuong P. Nguyen	3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 August 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) *9-11* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☒ Claim(s) *1 and 8* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 August 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of invention I in the reply filed on 08/28/2008 is acknowledged. The traversal is on the ground(s) that there is special technical feature that defines a contribution over the prior art.. This is not found persuasive because Group II lacks the corresponding special technical feature of the vehicle speeds above a threshold speed, the vehicle speed is adjusted to a higher selected set speed if no vehicle traveling in front is detected as required in Group I ; therefore, there is no unity between groups. Thus, the inventive concept does not define a contribution over the prior art. Therefore, the requirement is still deemed proper and is therefore made FINAL.

2. Claims 9-11 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 08/28/2008.

Claim Objections

3. Claims 1 and 8 are objected to because of the following informalities:

Regarding claim 1, line 8 – "*a vehicle*" needs to be changed to "*the vehicle*".

Regarding claim 8, "*the method as claimed in claim 8*" needs to be changed to "*the method as claimed in claim 1*"

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. Claims 1-8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the claim is generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors, e.g. in lines 5-10 of the claims, some punctuation marks such as "**;**" or "**,**" are needed to clearly define the subject matter as claimed.

Still regarding claim 1 – in line 7, it appears that the term "*the vehicle speed*" is missing in front of the limitation "*below the threshold speed*"

Still regarding claim 1 – in lines 9-10, the limitation of "*the control below the threshold speed being carried out by adjusting the distance from the vehicle traveling in front*" is vague, unclear, and not readily understood.

In addition still regarding claim 1, the claim is not in proper *steps form*. Claims need to be rewritten so that it corresponds to the steps such as "adjusting...", "controlling..." etc.

Regarding claims 1, 3-4, the phrase "in particular" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Other claims are also rejected based on their dependency of the defected parent claims.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

6. Claims 1-7, as best understood, are rejected under 35 U.S.C. 102(a) as being anticipated by Michi et al (IDS reference DE 10153527 which translation was done by the Examiner).

Regarding claim 1, Michi et al disclose in Fig 1-3 a method for controlling the longitudinal movement of a vehicle, in particular by means of a longitudinal movement control system, wherein, for vehicle speeds above a threshold speed, the vehicle speed is adjusted to a higher selected set speed if no vehicle traveling in front is detected (Abstract; page 2, paragraph 2+; page 3), and if a vehicle traveling in front is detected the distance from this vehicle traveling in front is adjusted, characterized in that, below the threshold speed, the longitudinal movement of the vehicle is controlled only if a vehicle traveling in front is detected, the control below the threshold speed being carried out by adjusting the distance from the vehicle traveling in front (Abstract; page 3).

Regarding claim 2, Michi et al disclose in Fig 2, a uniform operating control concept is used for controlling the longitudinal movement over the entire speed range (Abstract; pages 3-4).

Regarding claim 3, Michi et al disclose in Fig 1-3, the control of the longitudinal movement below the threshold speed is carried out according to the concept of tracking functionality (Abstract; page 2, paragraph 2+; page 3).

Regarding claim 4, Michi et al disclose the driver of the vehicle is provided with a signal, in particular an audible and/or visual signal (i.e. driver activate ACC mode via special command or input of a key instruction), if the longitudinal movement control system is not active and/or cannot be activated below the threshold speed (page 4, last paragraph).

Regarding claim 5, Michi et al disclose that after the vehicle is in a stationary state, the driver is requested to enable automatic following of a guide vehicle (page 4, last paragraph).

Regarding claim 6, Michi et al disclose in Fig 3, the maximum deceleration capacity is increased as the vehicle's own speed drops (page 3, last paragraph – page 4).

Regarding claim 7, Michi et al disclose in Fig 1 the surroundings of the vehicle are sensed in the area in front (i.e. distance sensor 14), in particular sensed without gaps (Abstract; page 3).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claim 8, as best understood, is rejected under 35 U.S.C. 103(a) as being unpatentable over Michi et al as applied to claim 1 above, and further in view of Noecker (IDS reference WO 0198101 which translation was done by the Examiner).

Regarding claim 8, Michi et al disclose the invention except for the three lanes are sensed as claimed. Noecker teaches in the same field of endeavor in Fig 1, the three lanes are sensed with spacer measuring means to measure the distances from self vehicle to preceding vehicles in lanes 2a, 2b, and 2c (Abstract; page 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate such step of sensing the three lanes as taught by Noecker in the method of Michi et al because it does no more than yield predictable results of measuring the distance of self vehicle with other preceding vehicles since it has been held that the combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results (MPEP 2143).

10. While patent drawings are not drawn to scale, relationships clearly shown in the drawings of a reference patent cannot be disregarded in determining the patentability of claims. See In re Mraz, 59 CCPA 866, 455 F.2d 1069, 173 USPQ 25 (1972).

Conclusion

11. The cited prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chuong P. Nguyen whose telephone number is 571-272-3445. The examiner can normally be reached on M-F, 8:00 - 5:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

CN

/Jack W. Keith/
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